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PROTECTION OF MINORITIES

Note verbale dated 12 July 1994 from the Permanent Mission of Iraq to the United Nations Office at Geneva addressed to the Centre for Human Rights

The Permanent Mission of the Republic of Iraq to the United Nations Office at Geneva presents its compliments to the Centre for Human Rights and has the honour to enclose herewith a study entitled "Iraq's experience in dealing with the minorities". This study has been prepared by the Iraqi competent authorities.

The Permanent Mission requests the Centre for Human Rights to transmit this study to the forty-sixth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and to be considered as a document under item 18 of the agenda.

In this paper, we will be considering the specific question of protection of the rights of minorities and the manner in which Iraq has dealt with this issue, particularly since all the multi-ethnic States are currently passing through a turbulent period due to the increasingly acute intercommunal conflicts in their territory which are posing a greater threat than ever before in numerous parts of the world. Consequently, the entire international community is being called upon to assume its humanitarian responsibility by providing effective help and resolutely advocating peaceful means to deal with this problem and save mankind from the scourge of the civil wars that will eventually destabilize not only the States affected by them but also the international legal system.

Regardless of the morality of the various resolutions and recommendations adopted by the United Nations and its organs, the question of the minorities in Iraq is currently raising a host of problems connected with the conflict between Iraq and the Coalition States that led the attack on Iraq during the Kuwait crisis in January 1991.

In order to form a clear idea of the multifaceted campaign that is currently being waged against Iraq, particularly in regard to the rights of minorities, this question must be discussed from two standpoints: the legal aspects and the political aspects.

It is noteworthy that the question of national, ethnic or religious minorities supplements the developing legal and humanitarian concept of human rights and, particularly, the evolving idea of sovereign States, which were not conceived as being based on pure races with individual countries const uting "nations", a concept that implies that the State does not comprise any races or citizens that differ from the overwhelming majority in regard to ethnic origin, colour or language. In this connection, it should also be noted that the concept of the rights of minorities in itself reflects the image of a political society (a multinational, multiracial and multilingual State). The tremendous changes in the structure of international society at the end of the twentieth century also indicate the inevitability of social fusion and diversity transcending the borders of the sovereign State. This concept might give rise to new ideas, the development of which has been evident in recent years and which are awaiting a theoretical and legal foundation in keeping with their particular characteristics. This implies that the evolution of the rights of minorities in the theories and principles of human rights, which was a "natural" evolution that met the need for a legal and humanitarian shield in a wide variety of societies at a particular stage, will eventually be transcended as the international community develops towards greater openness, more extensive contacts and closer human relations, which are rightly regarded as the goal of modern social, economic and political development. Through the above-mentioned division of this issue into legal and political aspects, we will attempt to clarify the manner in which Iraq is dealing with this question.

1. The legal aspect

In order to understand the present situation of the minorities in the Iraqi State, one must be familiar with the series of laws and regulations currently in force which guarantee their rights, taking into consideration, in order to make the necessary comparisons, the dates of promulgation of those

laws and regulations and the facts concerning the actual exercise of the minority rights for which they provide, together with the mechanisms for their implementation.

In this connection, we must examine the recognized national rights of the Iraqi Kurds, in addition to the progress made in the recognition of their political rights through the Autonomy Act. In this regard, reference must be made to the fact that the Kurdish question in Iraq, which has always been a stage that Westerners have exploited in an attempt to undermine Iraqi national security, is in no way attributable to a prevalence of national or racial discrimination against the Iraqi Kurds. On the contrary, the entire question has been a facade for interference in Iraq's internal affairs and an attempt to weaken its central authority, even though the State has been able to establish a firm legal and democratic basis to address and deal with the political demands of the Kurdish leaders, taking into consideration the situation of the Kurds in neighbouring countries in which their national and historical existence is being denied at a time when some Western States, which claim to be making substantial contributions in the field of human rights, are totally disregarding those questions for reasons relating to their economic and political interests.

In this connection, there is a need to list the following specific facts concerning the rights that are actually enjoyed by the Iraqi Kurds:

(a) The Iraqi Kurdistan Regional Autonomy Act No. 33 of 1974.

(b) The Iraqi Kurdistan Regional Legislative Council Act No. 56 of 1980.

(c) In addition, article 5 of the Constitution designates the Kurds as part of the Iraqi people and, since 1974, Kurdish citizens have enjoyed autonomy on the basis of the Declaration of 11 March 1970.

(d) Elections to the Legislative Council were held in September 1989 and, on the basis thereof, the Legislative Council was formed under the terms of Presidential Decree No. 473 of 23 September 1989.

(e) Since 1980, elected representatives from the Kurdish region have participated in the elections to the National Assembly on an equal footing in accordance with the size of the region's population. In fact, the Kurds have been represented in the National Assembly by members democratically elected in three secret and direct ballots.

In this connection, it should also be noted that the Autonomy Act guaranteed the cultural and social rights of the Iraqi Kurds through:

(a) The establishment of the Kurdish Cultural and Publishing Centre.

(b) The Kurdish Academic Forum.

(c) A guarantee of freedom of the press at the local or country level.

(d) The compulsory nature of primary education.

(e) The compulsory teaching of the Kurdish language at the schools and universities in the Autonomous Region.

(f) The radio and television stations in the Autonomous Region, i.e. in the three northern governorates, which broadcast programmes in the Kurdish language.

(g) The developmental and health-related progress in the autonomous Region.

As in the case of the Kurds, the Iraqi State has recognized the full cultural and social rights of the other minorities, particularly the Turkomans, the Syriac-speaking Assyrian and Chaldean minorities and the Sabean and Yazidi communities. This confirms the manner in which the State is catering for the welfare of the religious communities, as stipulated in article 18 of the International Covenant on Civil and Political Rights. However, although Iraq is diligently applying the principle of non-discrimination among its citizens as a constitutional right of the minorities as stipulated in article 27 of the said Covenant, it has also taken positive measures to enable the minorities to exercise their rights without any discrimination. Reference can be made to the series of legislative enactments and regulations that guarantee non-discriminatory treatment and clearly illustrate the position that Iraq has adopted to deal with this matter through:

(a) Revolution Command Council Decision No. 251 of 1972, recognizing the cultural rights of the Syriac-speaking Assyrian and Chaldean minorities.

(b) Revolution Command Council Decision No. 89 of 1970, recognizing the cultural rights of the Turkomans.

(c) Iraq's constitutional commitment to respect the freedom of thought, conscience and religion of all religious communities, without any discrimination, as stipulated in article 18 of the International Covenant.

(d) The Ministry of Awqaf (Religious Endowments) is continuing to cater for the welfare of religious communities pursuant to the Religious Community Welfare Ordinance No. 32 of 1981. To this end, institutes and seminaries for religious studies have been opened at Baghdad and Mosul from which clergymen and monks of all religious denominations can graduate. A large number of students have been sent to study religion at institutes and universities throughout the world. Clergymen and monks have also been sent to obtain higher diplomas in theology, ecclesiastical law and Bible studies at European universities and approval has been granted for religious community leaders and clergymen to travel to attend religious meetings and conferences and deliver lectures at foreign universities.

(e) Iraq is committed to the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which was proclaimed by the General Assembly of the United Nations in resolution 36/55 of 25 November 1981, and, in accordance with article 6

thereof, is subsidizing the publication of two religious magazines. The first, published at Mosul, is called "Christian thought" and the second, published at Baghdad, is called "Mesopotamia" (both in Arabic).

(f) Iraq respects every person's right to observe religious celebrations, holidays and rites in accordance with the teachings of his religion or belief.

(g) Iraq subsidizes the import of holy scriptures and testaments into its territory.

(h) The construction, renovation and furnishing of churches are subsidized.

(i) Permission is granted for the teaching of religion and the exercise of religious rites at appropriate places, provided that such does not prejudice public safety, order, health or morals, as stipulated in article 1, paragraph 3, of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which was proclaimed by the General Assembly of the United Nations in resolution 36/55 in November 1981.

2. Evaluation of the problem

As stated in the report of the Commission on Human Rights (Sub-Commission on Prevention of Discrimination and Protection of Minorities, forty-fifth session, 10 August 1993), international law concerning human rights seeks primarily to ensure equality between all human beings. Within the context of our subject, that law places limitations on the collective rights of majorities and minorities. This concept implies denial of the right to grant privileges to or through members of the majority. Minority rights means affirmation of the rights of minorities which, otherwise, would have to be derived from human rights in general. Effective equality is essential. If the majority wishes to strengthen its cultural and social identity, this does not invalidate the rights of others to likewise strengthen their identity and culture with State support.

A study of article 2 of the International Covenant on Civil and Political Rights, as well as article 18 concerning freedom of religion and belief, article 19 concerning freedom of opinion and expression, article 21 concerning freedom of peaceful assembly, article 22 concerning freedom of association, article 25 concerning participation in public affairs and article 27 concerning the rights of minorities, clearly shows that, through the corpus of its legislation currently in force and actually applied, Iraq is indeed respecting the rights and limitations stipulated in that international instrument in regard to recognition and enjoyment of the minority rights specified therein, particularly the elimination of discrimination on any of the grounds mentioned in that instrument.

In general, the basic elements and focal points of minority rights are as follows:

(a) Equality of treatment or non-discrimination.

(b) The right to exist.

(c) The right to an identity.

It is no exaggeration to say that any attempt by an impartial researcher to ascertain the extent to which Iraq is applying the above-mentioned basic elements of minority rights will clearly show that it has actually transcended the minimum rights that international instruments are endeavouring to guarantee. In fact, a sound legal analysis shows that such minorities in Iraq enjoy "privileges", so to speak, in excess of those that are permitted by law, which is not the case in other developing countries, particularly the neighbouring ones.

The political aspect

In political sociology, it is a recognized fact that the political situation of any society is the driving force behind the recognition of rights and the classification of obligations. This means that, but for the existence of a political defect in society, there would be no need for rights to be recognized and incorporated in specific legislative enactments. For example, it is the adoption of legislation regulating public rights that determines the extent of the need for the adoption of other legislation to guarantee minority rights. The crucial aspect is the degree of social balance between the majority and the minorities. If the minorities enjoy the same rights as the majority, there is no reason to promulgate new legislation to guarantee minority rights. However, when there is an imbalance and an unjust attribution of rights and privileges between the majority and the minorities, the problem of minorities becomes clearly evident.

Accordingly, a study of the results of this social equation necessitates consideration of this issue on the basis of two presuppositions:

The first presupposition concerns the true nature of the imbalance, if any, in Iraqi society which necessitated a study of the guarantee of minority rights. In this connection, it should be noted that the foundations of the modern Iraqi State were built on a number of social customs, traditions and values which were conducive to the development of a socio-economic and political situation that permitted discrimination of differing degrees on a wide variety of grounds. While acknowledging the broad responsibility of the legacy of foreign interference for the development of that distressing situation, it is also true to say that the successive Iraqi Governments since independence were unable to do anything about it. In fact, they were a product of that situation and consolidated its implications at all levels. Accordingly, the first laic approach to the situation was developed when the Arab Baath Socialist Party tackled those problems after its assumption of power in 1968. It promulgated all those legislative enactments and regulations guaranteeing minority rights in Iraq to which we referred in the first part of this paper. However, this does not imply disregard of an important practical fact, namely that those minority rights were not recognized because the leadership of the Party and the Revolution in the Iraqi State had granted special or exceptional rights to the majority in Iraq. On the contrary, the Party's national programme included recognition of the full rights of all members of Iraqi society, regardless of whether they belonged to

the majority or minorities. It is important to note that this is in keeping with the essence and philosophy of the Covenants concerning the principles of human rights in regard to the need to guarantee minority rights. Since 1968, the Iraqi State has faithfully respected the principles of human rights in regard to minority rights by refusing to permit the development of legal, economic or social situations in which the majority would have recognized rights and privileges that were not enjoyed by the minorities living in Iraq. This fact must necessarily constitute the basis for a clarification and definition of the Iraqi position.

Accordingly, why was there a need to regulate or recognize so-called "minority rights", particularly after 1968, as long as the position was as we have stated? To clarify the said position, we wish to say that the requirements of social harmony and the far-sighted vision of Iraq's political leaders indicated the need to promulgate a number of legislative enactments to provide a legislative affirmation and commitment rather than a guarantee of minority rights, since such a guarantee already existed whereas legislation was required as a reminder of the real nature of the political, economic and social orientations embodied in the ideology of the Arab Baath Socialist Party, the humanitarian Party par excellence. However, the real nature and consequences of these influences needed to be made clear for two reasons: firstly, to safeguard the general political position and allow no scope for malicious and carefully conceived attempts to detract from the unity of Iraqi society by exploiting the issue of minority rights and, secondly, to regulate Iraq's demographic situation in response to the nature of the geo-political situation in view of the fact that most of the minorities were living, in even larger numbers, in neighbouring societies and States. We will clarify this point in the second presupposition.

The second presupposition involves an explanation and clarification of the allegations and accusations, that some Western States have made concerning violations of minority rights in Iraq. A study of the political aspect clearly shows that none of those accusations have any legal basis, nor do they relate to human rights; they constitute unacceptable political interference in Iraq's internal affairs. Consequently, the allegations concerning the violation of human rights, and more specifically minority rights, in Iraq actually fall within a political context illustrated by the conflict between a national forward-looking strategy and the economic and political interests of some Western States in this region.

An examination of this question clearly shows the scope and magnitude of foreign interference, which exploits local factors in an attempt to undermine the political and national unity of society and thwart the national strategy. The principal local instruments are the exploitation of minority rights and an attempt to undermine the loyalty of the minorities by giving them a false sense of inequality and devising ways and means to subvert their mentalities and feelings with a view to winning their hearts and minds and furthering the foreign plan aimed at disrupting the unity of society and the State in Iraq.

A general appraisal of the campaign that is being waged against Iraq shows that it is not confined to minority rights. In fact, it extends to the rights of religious communities, in regard to which there is no reason to think that there is any dispute whatsoever. This applies in particular to the allegations concerning the rights of the Shi'ites, as compared with the Sunnis, which have been expanded to cover the whole field of human rights.

Conclusion

From the above, we can conclude that the allegations of violations of human rights that are currently being made against Iraq by some Western regimes that have succeeded in exploiting some United Nations organs in order to inflame public opinion against Iraq, especially on the question of the rights of minorities and religious communities, fall within the context of the hostile political campaign that is being waged against Iraq with a view to fabricating subterfuges for the implementation of imperialist schemes and interfering in Iraq's internal affairs on the pretext of protecting and safeguarding minority rights.

The corpus of laws and legislation, to which reference has been made in this paper and which the Government of Iraq has promulgated to safeguard human rights, confirms that the allegations made against Iraq have no legal basis. Consequently, this leads to the inescapable conclusion that some Western regimes are using the question of minorities solely as a subterfuge to further their quest for formal measures that are far removed from the substance of the basic issue and merely constitute attempts to interfere in the internal affairs of States in furtherance of specific political interests.